



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 13 2018

CERTIFIED MAIL 70171450000079130902  
RETURN RECEIPT REQUESTED

Mr. Ben Shoemaker  
D.R. Horton, Inc.  
6200 Lee Vista Boulevard, Suite 400  
Orlando, Florida 32822

RE: Information Request Letter 308-18-007

Dear Mr. Shoemaker:

The U.S. Environmental Protection Agency, Region 4, has learned that a discharge of dredged and/or fill material has occurred in waters of the United States in streams and wetlands adjacent to Lake Tohopekaliga without a U.S. Army Corps of Engineers (Corps) Clean Water Act (CWA) Section 404, 33 U.S.C. § 1344, permit on property owned by D.R. Horton, Inc. (D.R. Horton). The location of the approximate 1,109.2-acre tract, known as Kindred (formerly known as Toho Preserve), is southwest of Neptune Road (State Road 525), in Osceola County, Florida, near 28. 264622° north latitude and 81. 371614° west longitude (See Exhibits A and B of enclosed Information Request). According to our preliminary investigation, the discharges occurred sometime after September 2017 in association with constructing a residential development.

The EPA is continuing to investigate D.R. Horton's compliance with the CWA. Therefore, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, the EPA hereby requests that D.R. Horton provide the information set forth in Enclosure A within thirty (30) days of receipt of this letter. Your response should be sent to:

Mr. Christopher Parker  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
Marine Regulatory and Wetlands Enforcement Section  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303

Failure to provide a full and complete response to this information request or to adequately justify a failure to respond within the time frame specified above may result in an EPA enforcement action pursuant to federal law, including, but not limited to 33 U.S.C. § 1319 and 18 U.S.C. § 1001.

If D.R. Horton believes that any of the requested information is Confidential Business Information (CBI), it may assert a business confidentiality claim with respect to such information in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Subpart B, Part 2, 40 C.F.R. § 2.201 *et seq.* Please separate documents that you wish to protect as CBI from non-confidential documents. Sending documents claimed as CBI electronically to the EPA is done at the risk of the claimant, as the

EPA does not have the capability to encrypt electronic information. The EPA requests that any such information be physically mailed to the address provided. If D.R. Horton does not assert a CBI claim, the EPA may make information submitted under this request available to the public without further notice to D.R. Horton. Additional information regarding the EPA's requirements for confidential treatment of information can be found in Subpart B, Part 2, 40 C.F.R. § 2.201 *et seq.*

We have also enclosed a document that provides information for small businesses that may be subject to an EPA enforcement action. This document is for your use and to assist you in understanding the compliance assistance resources and tools available to you. Any decision to seek compliance assistance at this time, however, does not relieve D.R. Horton of its obligation to the EPA nor does it create any new rights or defenses and will not affect the EPA's decision to pursue enforcement action.

If you have any questions concerning this matter, please contact Mr. Christopher Parker at (404) 562-9838 or have your attorney contact Mr. Matthew Hicks at (404) 562-9670.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas McGill", with a large, stylized flourish at the end.

Thomas McGill  
Chief

Ocean, Wetlands, and Streams Protection Branch

Enclosures

cc: Mr. Robert Halbert, Chief, U.S. Army Corps of Engineers, Enforcement Section  
Mr. John Truitt, Florida Department of Environmental Protection  
Ms. Fran Phillips, Esq., Gardere Wynne Sewell LLP

## ENCLOSURE A – EPA SECTION 308 INFORMATION REQUEST

### Instructions

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this information request.
2. Precede each answer with the number of the Question to which it corresponds.
3. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
4. You must provide the information requested even though you may contend that it includes confidential business information (CBI) such as trade secrets. You may, if you desire, assert a CBI claim covering part or all of the information requested, under 40 C.F.R. § 2.203(b), by attaching to such information at the time it is submitted, a cover sheet with the words “trade secret,” “proprietary,” or “company confidential” stamped or typed on it. Information covered by such claim will be disclosed by the EPA only to the extent, and only by means, of the procedures set forth in the regulation set forth above. **If you do not assert a confidentiality claim, when you submit your information to the EPA, the EPA may disclose the information to the public without further notice to you.** You should read the above cited regulations carefully before asserting a CBI claim, since certain categories of information are not properly the subject of such a claim.

### Definitions

The following definitions shall apply to the following words as they appear in the Questions below:

5. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the Clean Water Act or its implementing regulations, in which case the statutory or regulatory definitions shall control.
6. Words in the masculine may be construed in the feminine if appropriate, and vice versa, and words in the singular may be construed in the plural if appropriate, and vice versa, in the context of a particular question or questions.
7. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed outside its scope.
8. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known business address and business telephone number, present or last



known home address and home telephone number, and present or last known job title, position or business.

9. The term “identify” means, with respect to a document, to provide its customary business description; its date; its number, if any (invoice or purchase order number); the identity of the author, addressee and/or recipient; and substance of the subject matter.

10. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.

11. The term “Site” means the parcel or parcels of land containing the Discharge Area, located southwest of Neptune Road (State Road 525), within Section 31, Township 25S, Range 30E; Section 36, Township 25S, Range 29E; Section 1, Township 26S, Range 29E; and Section 6; Township 26S, Range 30E, Osceola County, Florida. The Site is indicated on the enclosed Exhibits A and B.

12. The term “Discharge Area” means the wetlands and streams that have been impacted either through filling, excavating, or mechanical land clearing with side cast of dredged and/or fill material. More specifically, the Discharge Area is in wetlands and streams situated on the Site, in Osceola County, Florida, at or near 28.264622° north latitude and 81.371614° west longitude. The Discharge Area includes areas S-2, S-3, W-7, and W-8, as indicated on the enclosed Exhibit C, and any other discharges of dredged or fill material into waters of the United States at the Site that have not been resolved by the EPA.

13. The term “Work” means any land clearing activities, ditching, dredging, side casting, road construction, stream crossing construction, mechanical land clearing, piping of streams, timber harvesting, excavating, mining or filling activities that have occurred in wetlands or streams located at the Discharge Area since you owned, controlled, or did any Work at the Discharge area.

14. The term “you” and/or “Respondent” shall mean D.R. Horton, Inc., and/or any company, entity, or corporation that has directed work at the Site.

### Questions

Please provide the EPA with the following information or documents. To the extent a question asks for information D.R. Horton, Inc., already provided in its October 3, 2016 response to EPA’s Information Request Letter 308-16-003, EPA only seeks updates to that information.

15. The name and address of any contractor, subcontractor, consultant, agent, or individual who directed or participated in the Work at the Discharge Area.
16. The types of equipment used to carry out the Work, and the names and addresses of the person and/or companies that own and/or operate the equipment.
17. The date upon which Work was commenced and the date upon which the Work was completed or will be completed.
18. A description of all Work at the Discharge Area performed by Respondent, or on behalf of the Respondent by its contractor(s), subcontractor(s), consultant(s), or agent(s).
19. A description of any Work performed at the Discharge Area by any entity other than the Respondent, its contractor(s), subcontractor(s), consultant(s), or agent(s).
20. A description of the entire scope of activities at the Site including any maps and engineering plans.
21. A description of the condition of the overall Site before Work commenced.
22. A description of the condition of the Discharge Area before Work commenced.
23. Copies of any on-site environmental assessments, including environmental assessments of soils, vegetation or hydrology at the Site.
24. Copies of any State or local permits that may have been received for the Work at the Discharge Area.
25. Please provide all Federal permits you received to conduct Work at the Discharge Area. If you did not obtain Federal permits for Work at the Discharge Area, please explain why.
26. Plans for any additional filling, excavating, or other land disturbing activities at the Site.
27. Copies of documents, including notes, pertaining to any written or verbal communication with Federal, State, or local agencies regarding the Work.
28. The names and activities of all contractors or consultants or other entities that assisted with securing any local, state, or federal permits or easements associated with the Discharge Area.
29. Copies of any contracts covering Work at the Discharge Area.

30. Please identify the individual or individuals who prepared the responses to this Information Request.

At the end of your response to this information request, please include the following certification:

“I certify that I have personally reviewed the information contained in this response to the information request and the response is truthful, accurate and complete. I further certify that the response to the information request contains all documents responsive to the request. I am aware that there are significant penalties for submitting false information including the possibility of further enforcement under the CWA.”

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Name

Title



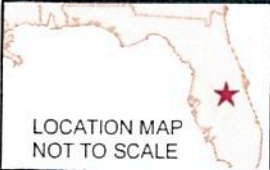
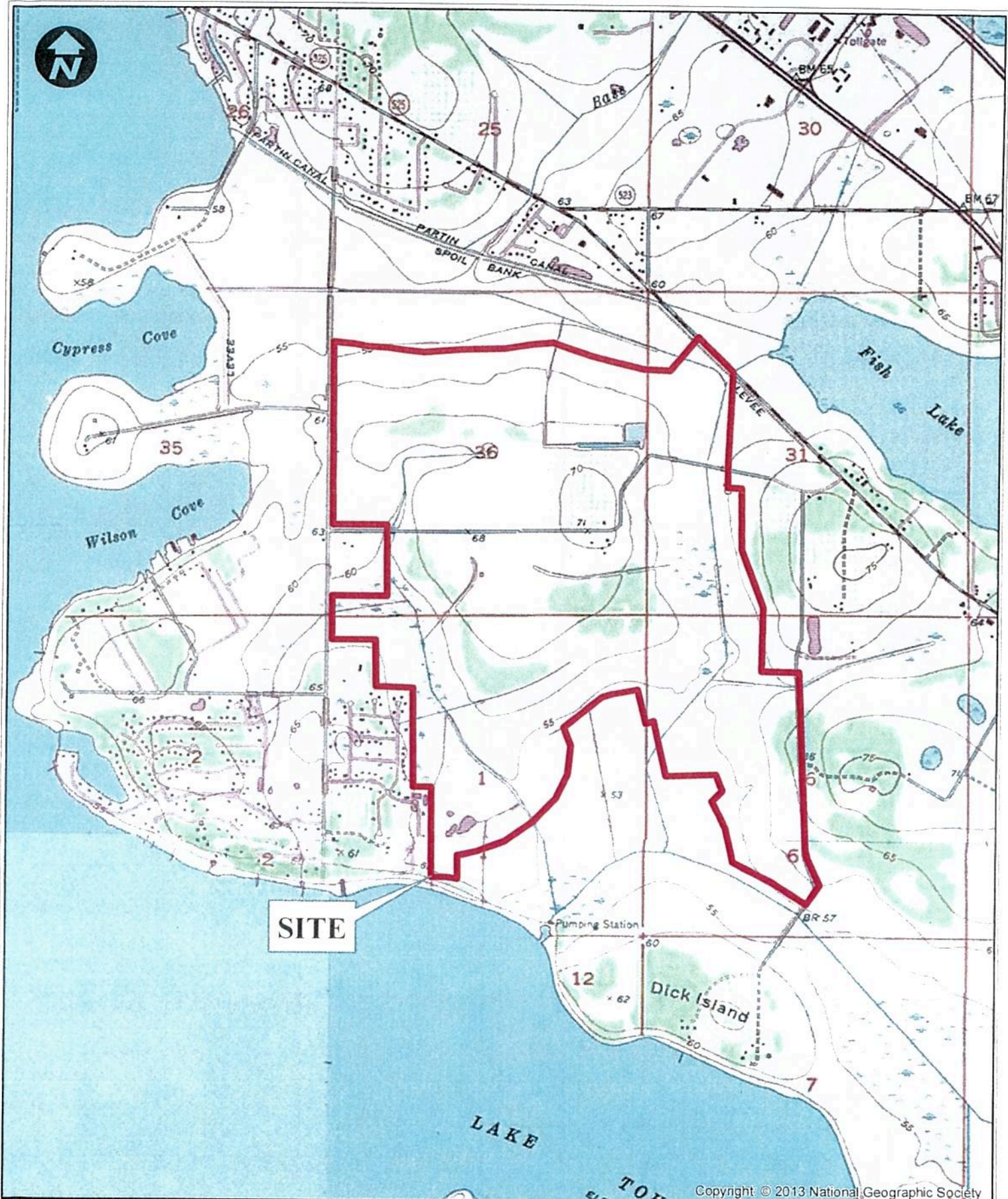


EXHIBIT A  
KINDRED  
OSCEOLA COUNTY, FLORIDA

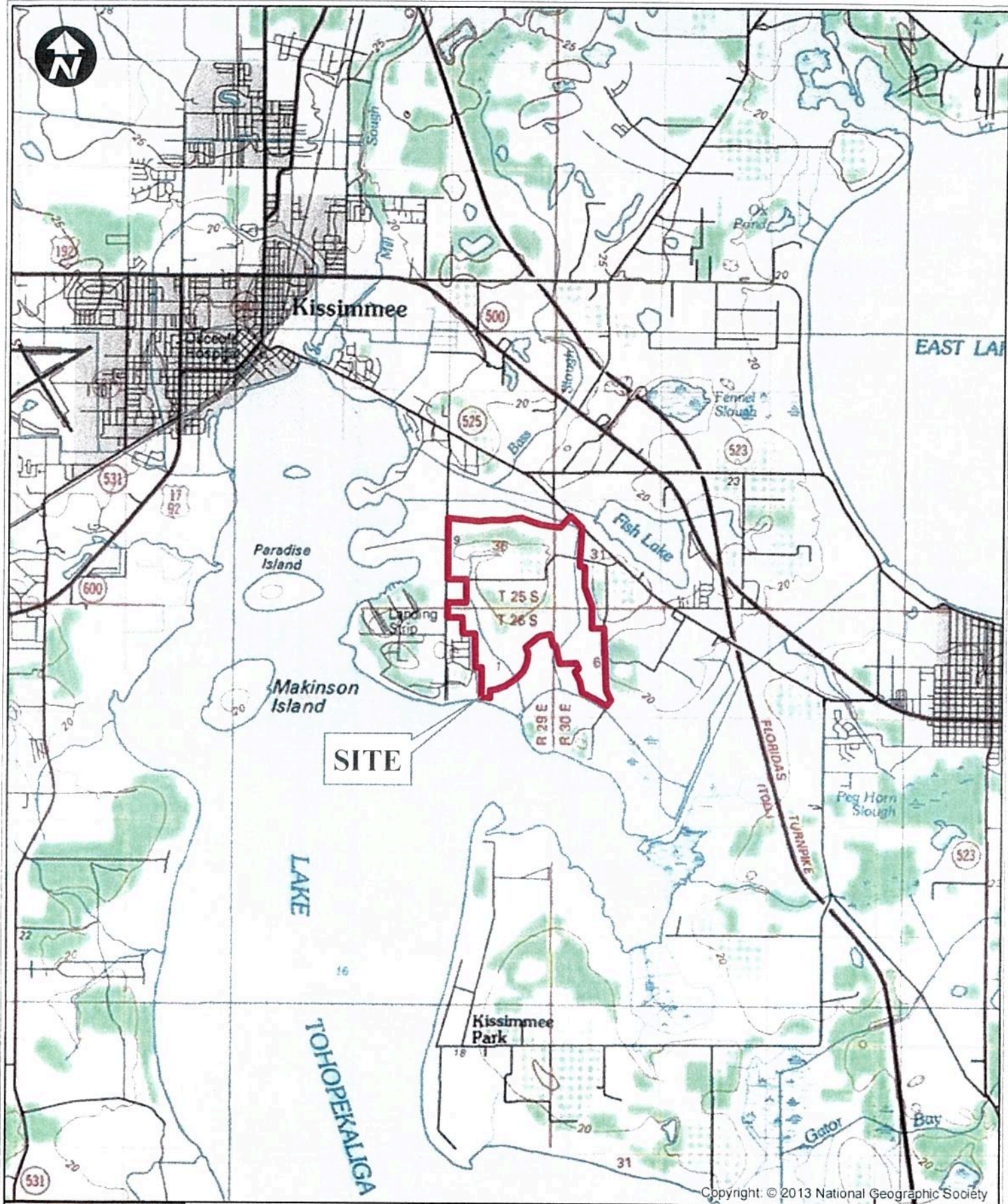


**Legend**

Site







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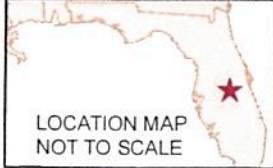


EXHIBIT B  
KINDRED  
OSCEOLA COUNTY, FLORIDA

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Miles

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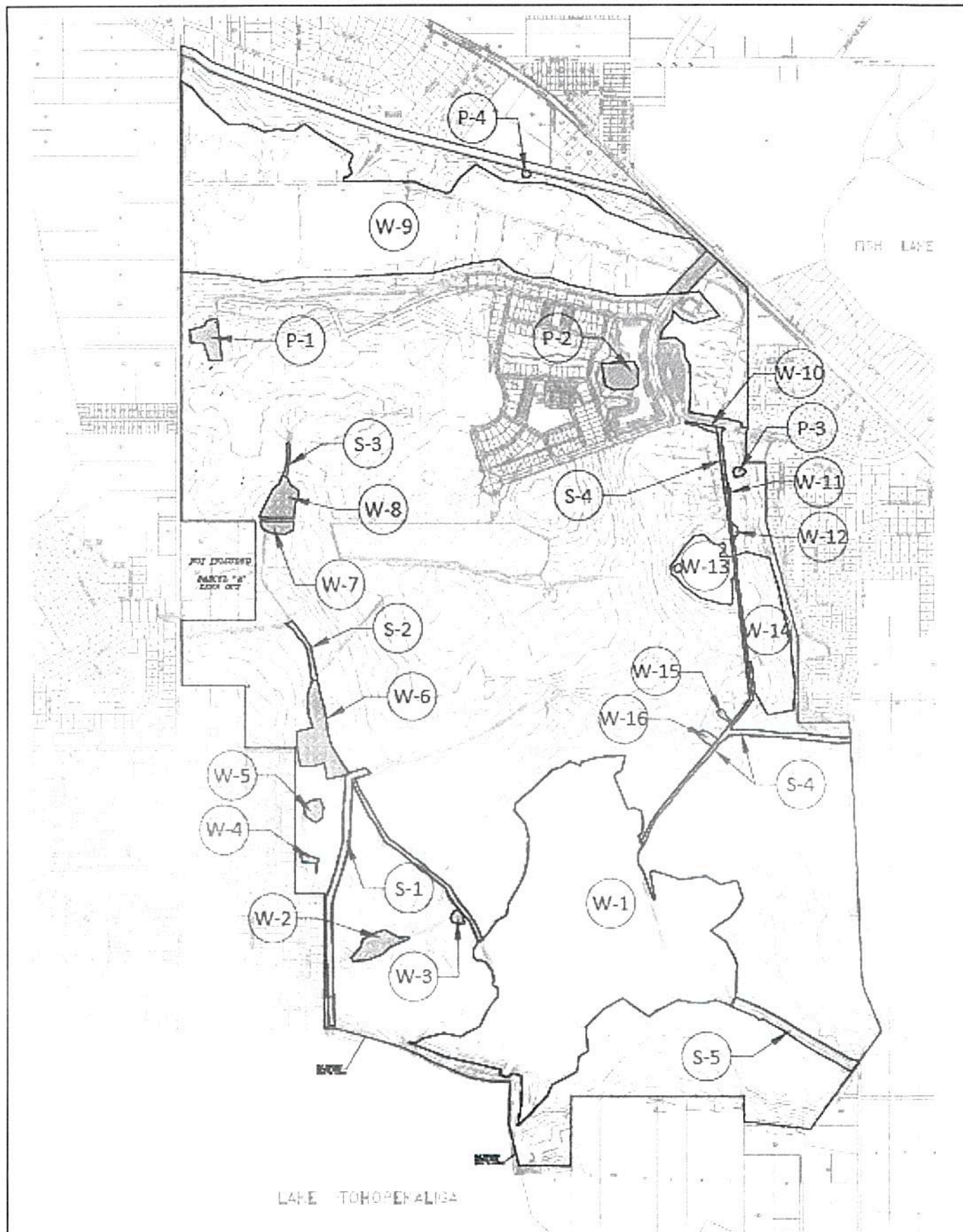


EXHIBIT C  
KINDRED  
OSCEOLA COUNTY, FLORIDA

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| <input type="checkbox"/> Adult Signature Required            | \$ | _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ | _____ |

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Mr. Ben Shoemaker  
D.R. Horton, Inc.  
6200 Lee Vista Boulevard, Suite 400  
Orlando, Florida 32822

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions